

D.B. Civil Special Appeal (Writ) No.1312/2005
(Prem Bihari Lal Sharma Versus Kumawat Kshtriya Bal
Shiksha Samiti & Others)

Date of Order :: 30th October, 2007

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr. Akhil Simlote for the appellant

P.C.

On 11th July, 1984, the respondent no.1- Kumawat Kshtriya Bal Shiksha Samiti issued an advertisement for the post of Head Master. The appellant applied and was selected by the order dated 25th August, 1984 for the period upto 15th May, 1985. It is appellant's case that the Management Committee in its meeting dated 12th January, 1985, resolved to continue the appointment of the appellant on probation period of one and year and, thus, his appointment was upto 31st October, 1985. However by an illegal order dated 18th May, 1985, his appointment was brought to an end. The appellant challenged the order dated 18th May, 1985 by filing a civil suit in the court of Additional Munsiff No. 2, Jaipur City, Jaipur. In the suit he prayed that the order dated 18th May, 1985 be

declared illegal and unlawful and if it was not possible to pass an order directing the respondent no.1 to continue the service of the appellant, adequate

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compensation be granted.

2. On coming into force of the Rajasthan Non Government Educational Institutions Act, 1989 (for short, "Act of 1989") effective from 1st January, 1993, the suit was transferred to the Rajasthan Non Government Educational Institutions Tribunal. Before the Tribunal, it was admitted by the appellant that he was employed with Dayananad Public Senior Higher Secondary School. The Tribunal, therefore, held that the legality and correctness of the order dated 18th May, 1995 was not required to be gone into. However, the Tribunal directed the respondent no.1 to make payment of salary for the period from April, 1985 to 18th May, 1985 and his remuneration for the board examination, 1985 within six months from the order alongwith the simple interest @ 6%. The order of the Tribunal dated 4th November, 2003 was challenged by the appellant before the Single

Judge. By his order dated 11th November, 2005, the Single Judge dismissed the writ petition and hence the appeal.

3. Mr. Akhil Simlote, counsel for the appellant urged that the Tribunal ought to have considered the legality and correctness of the order dated 18th May, 1985 which was directly

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put in issue. According to him the termination order dated 18th May, 1985 is manifestly illegal being in contravention of Rule 39 of the Rajasthan Non Government Educational Institutions Rules, 1993. He submitted that if the reinstatement was not possible, the appellant ought to have been awarded compensation for which the relief was claimed. The counsel would submit that the Tribunal committed serious error in not adverting to these aspects.

4. The submissions of the counsel for the appellant do not appeal us. The contention of the counsel for the appellant that the order of termination dated 18th May, 1985 was issued in breach and contravention of Rule 39 of the

Rajasthan Non Government Educational Institutions Rules, 1993 is founded on misconception. The order of termination admittedly came to be issued on 18th May, 1985. At that time Rajasthan Non Government Educational Institutions Act, 1989 had not even been enacted much less the Rajasthan Non Government Educational Institutions Rules, 1993. How could there have been compliance of an unborn law. Rather it would be seen that the appellant's services were brought to an end

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during the probation period. Besides Rule 39 of the Rules of 1993, nothing has been shown by the counsel for the appellant to demonstrate that the order of termination dated 18th May, 1995 suffered from any illegality. Besides that, admittedly when the matter came up for consideration before the Tribunal, the appellant was already employed in a different institution namely Dayananad Public Senior Higher Secondary School. In this backdrop, if the Tribunal held that no controversy about legality and correctness of the termination order survived, the approach of the Tribunal cannot be

said to be unjustified. For what we have indicated above, there was no question of any award of any compensation to the appellant.

5. Special appeal, accordingly, has no merit and is dismissed in limine.

R.S. CHAUHAN, J.

R.M. LODHA, J.